IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 4925 OF 2007
IN
WRIT PETITION NO. 2628 OF 2006

Shailendra Ravindra Sathe vs. State of Maharashtra & Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
OCTOBER 10, 2007.

Heard Shri Mirza, learned counsel for the original petitioner, Shri Jaiswal, learned Assistant Government Pleader for respondents No. 1 to 3, Shri Wakode, learned counsel for respondent No.4 and Shri Dhatrak, learned counsel for Respondent No. 5.

Respondent No.1 in Writ Petition has filed this application on the ground that in view of the policy decision taken by the State Government in 1995, it is not open to it to issue proclamation for allotment of Semi Wholesale licence.

Shri Jaiswal, learned AGP has invited attention to communication dated 8.12.1995

to point out this policy decision. He further states that Respondent No.5 to whom the quota of Mr. Khetani from Ghatanji Taluka has been attached is from the same town i.e. Ghatanji while the petitioner was from Pardi i.e. different town. He contends that as per policy decision, if the Semi Whole seller is available in very same town, the quota becoming available on such cancellation is to be attached to such Semi Whole seller. He, therefore, states that direction issued by this Court in its order dated 27.2.2007 to issue proclamation for permanently allotting kerosene quota of Mr. Khetani for Ghatanji town cannot be complied with. He states that there is no challenge to policy decision taken in 1995 till this date.

Shri Dhatrak, learned counsel appearing for Respondent No.5 – Cooperative Society contends that Respondent No.5 – Cooperative Society is an existing Semi Wholesale licence holder in Ghatanji town only and as licence of Mr. Khetani from Ghatanji itself came to be cancelled, additional quota has become available in Ghatanji and same has been rightly attached

to the shop of Respondent No.5. He states that in view of the policy decision as envisaged in communication dated 8.12.1995, there cannot be any fresh proclamation and the action of attaching quota of Mr. Khetani to shop of Respondent No.5 is permanent.

Shri Mirza, learned counsel for the original petitioner invites attention to his pleadings and also argues that the petitioner is a Semi Wholesale licence holder and and he is similarly situated and his case is identical. He further states that in that view of the matter, the quota of Mr. Khetani was attached to shop of the petitioner and said arrangement remained in force for 12 years. He states that the petitioner invested huge amount to develop the facilities for conduct of this business and the order of Commissioner dated 11.4.2000 confers a right upon present petitioner to continue to enjoy said quota till the State Government takes appropriate decision after High Court decide the controversy. He states that the respondents have nowhere pointed out that High Court has taken any decision and

therefore time to have a re-look has arrived. He further contends that in such circumstances, the reliance upon policy decision is totally unwarranted and arbitrary. Shri Mirza, learned counsel also contends that if this Court is permitting the review as filed, writ petition should be restored back to file for its adjudication on merits and the petitioner should be given opportunity to argue writ petition again.

I have perused the application for modification as filed. Though styled as modification, it is in fact review which is being sought as policy decision taken in 1995 was not pointed out. There is no challenge to said policy decision before me. The petitioner has not challenged said policy decision independently anywhere.

In the circumstances, it is apparent that as per said policy decision, the Government was duty bound to attach the quota of shop of Mr. Khetani to other Semi Wholesale License holder working in Ghatanji i.e. present Respondent No.5. Respondent No.1 has stated that the arrangement made by it is permanent and there is no question of

issuing any fresh proclamation. It is further pointed out that the petitioner is not located at Ghatanji town and hence as per said policy decision, he is not entitled to claim quota.

The perusal of order dated 27.2.2007 of which review is sought clearly shows that this Court has only found that the petitioner is entitled to participate in the process of fresh allotment. In view of provisions of Article 14 of Constitution of India, Respondent No.1 cannot be conferred any larges arbitrarily. This Court has not found that the petitioner was possessing any legal right or any superior right because of the attachment of additional quota of Mr. Khetani to him for a period of 12 years. Even today learned counsel for the petitioner is not in a position to point out any provision of law by which any legal right flows in his favour on account of such temporary ad-hoc arrangement. He only relies upon the order of Commissioner dated 11.4.2000 as source of his right. In view of the order dated 27.2.2007, I have only found that the petitioner is entitled to participate in fresh process and proclamation. The government

has pointed out that in view of the policy decision, way back in 1995, it cannot issue any fresh proclamation.

In the circumstances until and unless the validity of such policy decision or its implementation is appropriately challenged, no direction can be given to State Government to issue fresh proclamation. In the circumstances, direction to that effect as given by order dated 27.2.2007 is hereby withdrawn. However, it is made clear that if at any time in future, Respondent No.1 issues proclamation for allotting the quota of Mr. Khetani again and if the petitioner is eligible to claim it, the claim of the petitioner for such quota shall be considered in accordance with law and the order dated 27.2.2007 or this order shall not come in the way of respondents for that purpose. The petitioner is also at liberty to independently challenge the policy decision as envisaged in communication dated 8.12.2005 or its implementation. It is made clear that the entitlement of petitioner to quota of Mr. Khetani or Ghatanji has been examined only in the light of said policy decision and the

petitioner is free to establish his right independently by questioning said policy decision.

The application for modification is accordingly allowed subject to observations made above. No order as to costs.

JUDGE

***GS.**